DISTRI(OF COLUMBIA TAX COURT

NATIONAL PARKS ASSOCIATION,)
)
Petitioner,)
)
v.) DOCKET NO. 2069
)
DISTRICT OF COLUMBIA,)
)
Respondent.)

OPINION AND ORDER

The issue is whether petitioner is exempt from D. C. real estate tax on its headquarters building at 1701 - 18th Street, N. W. Petitioner was formed in 1919 under the District's provisions for incorporation of associations "for benevolent, charitable, educational, literary, musical, scientific, religious, or missionary purposes * * *" (Act of March 3, 1901, Code sec. 29-601), and operates in general for the promotion and protection of our National Parks system, including the parks in the District of Columbia. The issue involves $2,706 tax assessed and paid for the fiscal year 1969, and arises now because the Association, late in 1967, purchased its headquarters building from the Disabled American Veterans.

The answer to the issue depends upon the construction to be given to the statutory exemption provision, exempting from D. C. real property tax (Act of December 24, 1942, 56 Stat. 1089; P.L. 846, 77th Cong., Ch. 826, section 1; Code sec. 47-801a(h)) --

> Buildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia.

Code sec. 47-801a(r''1) extends the "building" exemption to the land "reasonably required and actually used" to carry out the charitable activities and purposes. That portion of such premises rented for "any activity other than that for which exemption is granted" is subject to real estate tax. Annual reports under oath are required. Code secs. 47-801b and c.

Although not referred to by the parties, the provisions of section 1(q) of the Act of December 24, 1942, are of importance, exempting --

> Buildings belonging to organizations which are charged with the administration, coordination, or unification of activities, locally or otherwise, of institutions or organizations entitled to exemption under the provisions of this Act, and used as administrative headquarters thereof.

Messrs. Anthony Wayne Smith, President and General Counsel of the Association, Paul Mason Tilden, Editor of the National Parks Magazine, and Thomas Webster, Administrative Assistant, testified as to the uses, purposes, operations and activities of their organization. Their testimony is best summarized in the descriptive statement, "The Association and the Magazine", which follows the table of contents in the issue (February, 1969, Volume 43 Number 257) current at the time of trial. (Petitioner's exhibit 3.) As there set out --

> The National Parks Association is a completely independent, private, non-profit, public-service organization, educational and scientific in character, with over 39,000 members throughout the United States and abroad. It was established in 1919 by Stephen T. Mather, the first Director of the National Park Service. It publishes the monthly National Parks Magazine, received by all members.
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> The responsibilities of the Association relate primarily to the protection of the great national parks and monuments of America, in which it endeavors to cooperate with the Service, while functioning also as a constructive critic; and secondarily to the protection and restoration of the natural environment generally.

> Dues are $6.50 annual, $10.50 supporting, $20 sustaining, $35 contributing, $200 life with no further dues, and $1000 patron with no further dues. Contributions and bequests are also needed. Dues in excess of $6.50 [i.e., the value of the monthly magazine and postage] and contributions are deductible for Federal taxable income, and gifts and bequests are deductible for Federal gift and estate tax purposes. As an organization receiving such gifts, the Association is precluded by law and regulations from advocating or opposing legislation to any substantial extent; insofar as our authors may touch on legislation, they write as individuals. * * *

The officers and employees of the Association spend almost all of their business time in Washington. They are interested in and have put time, effort and money into local projects: our D. C. water supply system, protection of our open spaces and parks (e.g. Glover-Archbold), and the development of Assateague Island National Seashore. See transcript, pp. 8 - 10, two lead articles in petitioner's exhibit number 3, and its exhibits 4, 5 and 6. They maintain the Conservation Education Center (initially funded by the Eugene and Agnes Meyer Foundation), which gives lectures and motion pictures at the Smithsonian, as well as "sometimes, field trips out into the environs of the city." (Tr. 6.) The Center was "worked out" with the District's public school system, and furnishes program announcements to teachers and pupils. The Association is in the process of developing a library for public use covering its concerns, at the headquarters building.

The Association operates on a narrow margin of receipts (mostly membership dues and contributions) over expenses (membership solicitations, salaries, and professional services retained, inter alia), and any "profit" is "always re-budgeted for the next year back into the educational and scientific work of the organization." (Tr. 14, Pet. Exhibit 2.)

Approach to the problem of construing the Act. The simplistic approach is to read the exemption provision very literally: "public charity" is one thing according to the dictionary, "public education", or "scientific work" are others. As respondent puts it, "there is an abundance of evidence in this record which would support a conclusion that petitioner is an educational and scientific organization, and not a charitable one. * * * its real property, therefore, does not qualify for exemption from tax." (Br. 11.) The simplistic approach would be entirely proper if there were any evidence that Congress intended such a distinction, or if there were a reason for such a distinction. As we shall see, no such evidence or reason appears. An extension of this approach is to assume, arguendo, that petitioner's building is "used for purposes of public charity" in the legal sense, but to define restrictively the clause "principally in the District of Columbia" (Resp. Br. 5) --

> * * * petitioner's national headquarters happen to be located in the District of Columbia, but its activities are not principally devoted to the benefit of either the District or its citizens. In Hartford Acc. & Indemn. Co. v. Casualty Underwriters, 130 F.Supp. 56, 58 (D. Minn. 1955), it is said that the word "principally" is "synonymous with mainly, chiefly, in the main, * * *" The record here, however, amply reveals that petitioner's work is not public charity "chiefly" or "in the main" in the District of Columbia. * * *

Petitioner, in reply, also adopts a somewhat oversimplified approach to the problem. Parsing the words of the Statute, petitioner finds the only requirement to be that its building be "used for purposes of public charity", in distinction from "purposes of public charity principally in the District of Columbia". "Indeed, an abstraction like 'purposes of public charity' can hardly have a location anywhere." Reply Br. p. 1.

For a broad rather than a restrictive definition or "public charity" petitioner relies on the authorities, particularly International Reform Fed. v. Dist. Unemployment Comp. Bd., 76 App. D.C. 282, 131 F.2d 337 (1942), cert. den. 317 U.S. 693, in which the Federation, founded for "the establishment of higher codes of morality and manners throughout the world" (76 App. D.C. at 287), was held to be exempt from D. C. Social Security taxes as a corporation (in the words of the statute) "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes."

The exemption provision there in question was that contained in the original Social Security law -- the Act of August 28, 1935, 49 Stat. 946, section 311(b)(7), in part. This exemption provision was restrictively amended by the Act of June 4, 1943, 57 Stat. 100, ch. 117 (which extensively revised the entire section 311(b)) to read "organized and operated exclusively for religious or charitable purposes". Code section 46-301(b)(5)(G), in part. The Congressional purpose of the amendment was clearly to broaden the coverage of unemployment compensation and the taxes, or "contributions" exacted therefor.[1/] The Reform Federation case is, however, useful on the issue involved in the case at bar, as an example of the approach taken by the courts in construing other exemptions from D. C. taxes, and will be further considered infra.

Finally on this subject, it is common knowledge, at least in the District of Columbia, that Congress has specifically exempted from all or some taxes many private organizations

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1/ The International Reform Federation now pays Social Security taxes on its employees.

involving narrow special interests not commonly thought of as "public charity". Using the conventional rule that tax exemption provisions are ordinarily construed strictly against the taxpayer, National Rifle Assn. v. Young, 77 App. D.C. 290, 291, 134 F.2d 524, the easy approach is, to remit petitioner to Congress for relief, on the basis that a legislative remedy is appropriate for doubtful exemption claims. As we shall see, the strict construction rule is not applicable here, and the general approach by way of avoidance has not been used by the courts in prior cases.

Legislative history. The prime source material on what Congress intended by the notably ambiguous language of section 1(h) of P.L. 846, supra, (Code section 47-801a(h)) is found in S.Rep. No. 1634, 77th Cong., 2d Sess., and in the Committee Print of the Hearings on S.2673, superseded by S.2804, "A Bill to Define the Real Property Exempt from Taxation in the District of Columbia." The testimony of the then Corporation Counsel, now Senior Judge of the U. S. District Court, Richmond B. Keech, shows that the legislation had its origin in a study ordered by the District Commissioners on October 18, 1940.

Pursuant to the order, The D. C. Assessor made a study of "all privately owned exempt property" located in the District. The study was reviewed by a Real Estate Tax Exemption Board established by the Commissioners. The result was the return to the tax rolls of $24,855,397 of real estate "erroneously exempted" under then-existing law. The District Commissioners asked Congress for a rewrite of the tax exemption statutes which, they said, "are too strict in some instances, susceptible of far too liberal interpretation in other respects, and in need of reclassification if they are to be fairly and reasonably administered." Committee Print, pp. 1 - 8.

Examples of the many organizations so reinstated to the tax rolls and testifying at the August, 1942 hearings include: the National Rifle Association, the American Pharmaceutical Association, and the Brookings Institution (insofar as its research and administrative departments were concerned). Each organization wanted the language of the proposed rewrite to be sufficiently broad to exempt it. Significantly, the Community Chest of D. C. asked that the language of section 1(a)(3) of S.2673, then under consideration, be broadened for the benefit of nationwide organizations with buildings in the District, such as the Boy Scouts and the YMCA. Committee Print, p. 79. As proposed in S.2673, that section exempted --

> (3) Buildings used for purposes of public charity belonging to and operated by institutions which are not organized or operated for private gain. Public charity as contemplated by this Act, means charity which confers benefits on the public, or some portion thereof, of the District of Columbia. Charity is none the less public because it is limited in its operation to the members of a particular race, sect, or society, so long as it is wholly beneficient in the end to be attained, and no private or selfish purpose is fostered under the guise thereof;
>
> (4) * * *

As thus phrased, it is reasonably clear that S.2673 contemplated the so-called "quid pro quo" theory of exemption: charitable institutions are exempted if and when they serve the local public; cf. D. C. v. National Wildlife Federation, 93 App. D.C. 387, 389, 214 F.2d 217, " * * * [when the institution] performs a service of substantial character which otherwise the District Government, or any other, would actually assume." Note that only benefits to the D. C. (local) public are mentioned in the text proposed by S.2673 as the basis for the charitable exemption.

As sent to the enate floor, however, Sectio. 1(h) of S.2804 was radically revised to substitute the present text (S.Rep. No. 1634, pp. 240 - 242, word struck through deleted, word underlined added) --

> (h) Buildings belonging to and operated by institutions which are not organized or operated for private gain, and which are used for purposes of public charity principally in the District of Columbia.

According to the Senate Report, p.3, see also the identical language of H.Rep. No. 2635, 77th Cong., 2d Sess. p.2 - 3:

> Subparagraph (h) exempts buildings belonging to and operated by institutions which are not organized for private gain and which are used for purposes of public charity principally within the District of Columbia. The word "principally" has been inserted in this subparagraph in that some of the activities and benefactions of organizations devoted to public charity must, of necessity, reach beyond the confines of the District of Columbia. Such an institution is the American Red Cross, a quasi-governmental agency, designated by the Commissioners of the District of Columbia as a "charitable organization." No one could contend that its works of mercy and assistance are or could be limited to the District.

As everyone knows, substantially all of the charitable work of the American Red Cross is done outside the District rather than "some" of its "activities and benefactions". The example cited by the Report lays to rest the idea that Congress meant to exempt only local charities. The substitution of S.2804 language for that of S.2673 in section 1(h), in the light of the hearings,[2/] suggests that the text of section 1(h) was deliberately left as a broad generality, for future interpretation in particular cases such as the one at bar.

2/ A wide spectrum of special interests not generally regarded as charitable or educational testified at the hearings. None of their suggestions for phraseology of section 1(h) were adopted.

The Senate and House reports also contain identical language with respect to the coverage of section 1(q) of the Act, supra p.2. Again, the examples given are not in point on the present issue, but the language of the reports tends to show that a restrictive reading of the exemption provisions in the case of organizations such as petitioner's is not the Congressional purpose (H.R. Report No. 2635, supra, p. 6):

> The final type of building, which should be exempt from taxation, is set forth in subparagraph (q), and the language is intended to cover buildings which are used as administrative headquarters for and owned by organizations charged with the administration, coordination, or unification of the activities which are carried on, either locally or which may extend beyond the confines of the District of Columbia, by institutions or organizations entitled to exemption from taxation under the provisions of this act and which have been enumerated in the preceding subparagraphs. The building owned and occupied as the headquarters of the Washington Federation of Churches, representative of the Protestant denominations in the city, and the National Catholic Welfare Association, which houses the administrative offices of all local activities of the Catholic Church and is presided over by the archbishop, and that portion of the Methodist Building which contains the administrative offices of that church, are institutions of the type which this language is intended to cover. It is not intended that institutions which have no connection with local problems or local activities, in some form or other, should be exempted, but the committee do not attempt to define the ramifications of such activities as long as they embrace the District of Columbia.

Finally, on the matter of Congressional legislative history, we must consider, in construing section 1(h) broadly or restrictively, the implications involved in the fact that Congress has, time and again, seen fit to grant specific tax exemptions to organizations, by name, by what may be classed as "special legislation". We may start with the ten organizations listed in section 1(k) of the Act of December 24, 1942. After the

general exemptions for art galleries, libraries, "public charity" (the issue at bar), hospitals, and education, the Act continues --

> (k) Buildings belonging to and used in carrying on the purposes and activities of the National Geographic Society, American Pharmaceutical Association, The Medical Society of the District of Columbia, the National Lutheran Home, the National Academy of Sciences, Brookings Institution, the American Forestry Association, the Carnegie Institution of Washington, the American Chemical Society, the American Association to Promote the Teaching of Speech to the Deaf, and buildings belonging to such similar institutions as may be hereafter exempted from such taxation by special Acts of Congress.

In 1943, the American Tree Association was added to the list of "similar institutions" in the above section 1(k) by the Act of April 9, 1943, 57 Stat. 61, ch. 41, section 1. Other post-1942 special legislative exemptions are: the Disabled American Veterans (former owner of the property here in question), the Colonial Dames, Amvets, VFW, National Woman's Party, AAUW, National Guard Association, and Woodrow Wilson House. See Code sections 47-801a - 1 and 2, and 47-831 - 836 inclusive. The enactment of special legislation continues. See P.L. 90-459, effective July 1, 1968, exempting the land, improvements and furnishings of the Colonial Dames of America. Pre-1942 special exemptions, preserved by the general terms of section 1(e) of the Act, include a variety of other property, for example, property of the Luther Statue Association, the Daughters of the American Revolution, the Society of the Cincinnati and the Daughters of 1812. Code sections 47-812, 47-821 to 825 inclusive, 47-830, and 47-826.

The identical Committee Reports "Defining Real Property Exempt from Taxation, District of Columbia", supra, show that section 1(k) was incorporated in the Act in order "that there be no misunderstanding" in regard to the exemption of the named

"institutions" as educational institutions (H.R. Report No. 2635, p.3):

> * * * It is necessary in some of these cases that educational work in a broad sense be resorted to in order to complete the work of the particular institution. Several organizations of this character are specifically named in the bill. These institutions are professional in character, some educational, and others dedicated to the advancement of the various sciences. They are national headquarters of national organizations. They are housed in magnificient buildings, worthy of the organizations they represent. Their purpose is to gather information and data to be furnished in one form or another to the public in general, but specifically to the membership which comprises their organizations. The income from such memberships helps to maintain the institution in Washington. Many well-known and reliable magazines and trade journals are printed either in Washington or elsewhere as the result of data compiled by the staff maintained by such organization (sic) in this city, and income from which is also applied to the maintenance of staff and property.

The naming of certain specific exemptions thus took care of some of the organizations ("institutions") which considered that they had a problem at the time of the 1942 Congressional hearings, and preserved their special interests. Congress thus specifically used one of the two procedures by which exemption may be obtained: exemption "by special Acts of Congress". This was done "in order that there may be no misunderstanding". Nothing in such Congressional action derogates the other procedure: construction by the taxing authorities and the courts of the exemptions given in general terms by subdivisions (f) through (j) of section 1 of P.L. 846.

Summing up, there are no indications from the legislative history that the concept "public charity" in section 1(h) of the Act is to be narrowly construed if, by legal definition, petitioner qualifies as such; it is reasonably clear that

Congress eliminated the quid pro quo theory of exemption in construing that section; the hearings indicate that the proper phrasing of section 1(h) was a matter of difficulty, and deliberately left as a broad generality; and insofar as buildings which are the "administrative headquarters" of national organizations with local involvements "in some form or other" are concerned, they are to be exempted or not exempted, on an ad hoc case-by-case basis, depending on whether or not they qualify under the broad provisions "enumerated in the preceding subparagraphs" including section 1(h). Report No. 2635, supra.

Paraphrasing the language of the court, en banc, in the context of governmental immunity, in Spencer v. General Hospital, etc., ___ App. D.C. ___ (CADC No. 21,493, decided November 10, 1969) slip opinion p. 8, it may be said that:

> Until the Congress addresses itself to a comprehensive effort to identify the classes of exempt charities more particularly, it will be for the courts here, as they are doing elsewhere, to make these discriminating judgments.

Legal definition of "charity". Some of the authorities more directly in point, discussed infra, take their starting point directly or indirectly from Pennsylvania Co. for Insurance, etc. v. Helvering, 62 App. D.C. 254, 66 F.2d 284 (1933), construing the Federal estate tax exemption for bequests to corporations exclusively "religious, charitable, scientific, literary or educational" (including prevention of cruelty to children or animals). A bequest to the American Anti-Vivisection League was there held exempt, as one to a "corporation organized and operated exclusively for a charitable purpose", after an extensive review of cases involving the liberal definitions of "charitable trusts" in English and

American law. 62 App. D.C. at 255 - 257. Since the "propagation" of the views of the League "are animated by a desire to advance the common weal, it must be conceded the object is charitable unless it violates a public law or a fixed custom having the effect of law. * * *", 62 App. D.C. at 258.

This same broad line of reasoning was adopted in the International Reform Federation case, supra, where Chief Justice Groner, after a full review of the facts concerning the Federation's activities against liquor, the white slave traffic, harmful drugs "and kindred evils in the United States and throughout the world", commenced his discussion of the law as follows (citations omitted, 76 App. D.C. at 284):

> Counsel for the Board insist that, in order to be classified as a charitable corporation, it is necessary that appellant show that its principal objectives are to provide for the poor, the sick, and the needy, but we think this is too narrow and restricted a formula. In Commissioner v. Pemsel, Lord MacNaghten said that charity, in its legal sense, comprises four principal divisions -- trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. And we know of no modern case in which the definition has been confined strictly to the enumeration found in the Statute of Elizabeth. On the contrary, as the California Court said, " * * * the differing condition, character, and wants of communities and nations, change and enlarge the scope of charity, and where new necessities are created new charitable uses must be established."

In reaching the conclusion that the "primary and hence the exclusive purpose [of the organization] is religious, charitable, or educational" within the meaning of the exemption, the majority opinion cites and refers at length to cases involving charitable trusts, Federal estate tax exemptions, and Federal income tax exemptions. Senior Circuit

Judge, then Justice Miller, dissenting, stresses the inappropriateness of a broad definition of "charitable" where six other classes of organizations exempt from Social Security taxes are contained in the same statutory provision. 76 App. D.C. at 287.

In Government Services v. District of Columbia, 88 App. D.C. 360, 189 F.2d 662 (1951) cert. den. 342 U.S. 828, the corporation which operates the government cafeterias and recreational facilities claimed exemption from D. C. franchise, motor vehicle and personal property taxes on the ground that it is "an exclusively charitable organization". The court summarized "the sweeping phrases of court opinions referring to charity and charitable in various senses" (88 App. D.C. at 361, quoting from the Pennsylvania Company, etc. case, supra):

> * * * Generally they relate to charitable purposes in trusts, and the quotations are of ancient and honorable origin, going back into the days of Elizabeth. This court once said, in a tax case, that the great weight of opinion seems to be that a charitable trust "may be applied to almost anything that tends to promote the well-doing and well-being of social man." And the court, in the same case, used the expression "a desire to advance the common weal" as a test for charity. * * *

Government Services was held not to be a charitable organization; the court stressing the point that many organizations "operated for the public weal in a sense", like the transit company, are not charitable in the sense of the exemption provision. Furthermore, G.S.I. "admittedly makes profits", and "as a matter of tax philosophy" these profits should bear their share of the "burdens of municipal government services". 88 App. D.C. at 362.

District of Columbia v. Friendship House Assn., 91 App. D.C. 137, 198 F.2d 530 (1952) is one of the two authorities dealing directly with section 1(h) of P.L. 846, Code section 47-801a(h). There, respondent's settlement house was held exempt, despite the fact that moderate fees were charged for services to those parents able to pay. The per curiam decision says that the Government Services case, supra, "does not support petitioner's contention that only organizations 'for the relief of the poor' are charitable in a tax sense." The distinction is, that G.S.I. serves "at moderate prices but not below cost", whereas Friendship House "depends on public benevolence to meet expenses". 91 App. D.C. at 138.

The other such case is Catholic Home etc. v. District of Columbia, 82 App. D.C. 195, 161 F.2d 901 (1947), where petitioner owned "a home for indigent old ladies who might otherwise have become public charges", and bought another, operated by a new organization which it created, "for old ladies who were able to contribute something, but not enough to cover the cost of their maintenance and support." (82 App. D.C. at 195.) Held: subsection (h) does not require concurrence of ownership and operation in one institution. In reaching its conclusion, the court quotes Senator McCarran, "who sponsored the Senate bill and reported it", in 88 Cong. Rec. 9485 (1942) --

> The bill embraces 4 classes of property which would be exempt under its terms -- property which is devoted to education, with respect to which no profit inures; property which is devoted to religious purposes, with respect to which no profit inures; property devoted to charity, with respect to which no profit inures; and property which is devoted to science.

At this point, a tentative conclusion can be formulated, subject to further testing by comparison with other decisions on D. C. tax exemptions in pari materia, and further consideration

section 47-1208, exemption from personal property tax, exempting the personal property of "all library, benevolent, charitable, and scientific institutions incorporated under the laws of the United States or of the District of Columbia and not conducted for private gain." Note also that there is no stated or apparent reason why a given organization ("institution", in the statutory language, means inter alia "organization", see section 1(k) of P.L. 846) should be exempt from, e.g., income tax or personal property tax and not exempt from real estate tax. So far as appears, the differences in statutory language expressing the exemption are purely fortuitous.

The construction of the personal property tax exemption furnishes the case most nearly in point to the case at bar.

In District of Columbia v. National Wildlife Federation, 93 App. D.C. 387, 214 F.2d 217 (1954), the nationwide Federation for the advancement and conservation of wildlife was held exempt from D. C. personal property taxes as a "scientific institution", affirming the D. C. Tax Court. Its headquarters in D. C. employed 55 persons serving agencies, societies, clubs and individuals in 45 states, and published the bi-weekly "Conservation News". The District there contended, as it does in the present case, that the exemption did not apply because "the activities of the Federation within and for the benefit of the District are not a material part of its total work and do not relieve the local government of a burden it otherwise would have". In an opinion which sharply narrows and for purposes of the case at bar eliminates this, the quid pro quo theory that the institution is exempted only if it performs a service to the local public, the court said (93 App. D.C. at 389) --

> Accepting, therefore as a fact that the Federation's District activities are relatively minor when measured in terms of purely local benefits, we must reject the District's legal conclusio that this forecloses the exemption. While of course the statute granting the exemption is due to a Congressional purpose to aid the public, this does not require a scientific institution to show that it performs a service of substantial character which otherwise the District government or any other, would actually assume. Since the Federation is incorporated under the laws of the District of Columbia, is not conducted for private gain, and is truly a scientific institution, it qualifies for the exemption under the statute. (Citing the Catholic Education Press case, infra.)

The opinion considers the "colorable support" for the quid pro quo thesis found in the National Rifle Assn., Mt. Vernon Seminary, Government Services and Washington Chapter, etc. cases, supra and infra, and adopts the "view reflected" in the Catholic Education Press case, infra, "on the assumption that the scientific character of the institution, accompanied with the other statutory requisites, calls the exemption into effect." 93 App. D.C. at 390:

> * * * We reaffirm that position. We add that the work of the Federation, which has been described not only places it literally in the category of scientific institutions but is of a public character. Not only is there the absence of private gain but there is the presence of public benefit through the preservation and development of natural resources of wildlife within the nation.

Respondent, in the case at bar, admits that the "nature of the activities and purposes of the National Wildlife Federation are very similar to petitioner's", but distinguishes the case as one where the personal property tax exemption language "does not contain the all-important 'principally in the District of Columbia' phrase" of section 1(h) of the Act, and as one in which the statute specifically

referred to scientific institutions. (Br. 7 - 8.) As we have seen, in the case at bar, (1) the quid pro quo thesis is laid to rest by the legislative history of section 1(h) of the Act of December 24, 1942, as well as the Wildlife Federation case, which on this point is indistinguishable from the case at bar, and (2) a broader definition of "charitable" may be permissible in construing legislative exemptions that do not contain other customary descriptive adjectives, such as "benevolent", or "scientific".

Note that the personal property tax exemption provision, supra, does not contain an exemption for the personal property of "educational" institutions. In ordinary parlance, certainly the National Wildlife Federation is educational rather than scientific, i.e., it operates to inform and educate rather than to systemitize knowledge.

The Catholic Education Press case referred to above, 91 App. D.C. 126, 199 Fed. 175 (en banc, 1952), cert. den. 344 U.S. 896, establishes that given descriptive adjectives such as "scientific" are not restrictively defined to deny exemptions to otherwise qualifying organizations. There, an organization publishing books on education, religion, history and logic, distributing spelling books and books on music and phonograph records, and publishing the monthly "Catholic Educational Review", was held to be a "scientific institution" within the meaning of the personal property tax exemption. Of course, in a literal sense, the Press is, on the facts above recited, an educational organization. The syllogism used by the court is: the Press, a separate corporation, is really part of the Catholic University of America, the University advances or promotes knowledge, and this "is the English rendering of 'science'." 91 App. D.C.

at 128 and footnote 2. Judge Edgerton, dissenting, stresses the meaning of "scientific" in ordinary usage and the actual separateness of the Press from the University. 91 App. D.C. at 130 - 131.

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Other cases peripherally involved should be noticed. D. C. v. Mount Vernon Seminary, 69 App. D.C. 251, 100 F.2d 116 (1938), held petitioner exempt from real and personal property taxes under the pre-1942 statutes, as an educational institution not for private gain; the court citing petitioner's exemption from Federal income taxes, and, significantly, expanding in very general terms on its own concept of good public policy, including the thought that, "It is necessary in a democracy that all children, including those of the wealthy and socially correct, shall be educated." 69 App. D.C. at 254, see also 253 - 255.

Hazen v. National Rifle Assn., 69 App. D.C. 339 (1938), held the Association not to be exempt from personal property taxes; its purposes and activities were not primarily educational. National Rifle Assn. v. Young, 77 App. D.C. 290, 134 F.2d 524 (1943) held the Association not to be exempt from unemployment contributions.[3/]

Washington Chapter, etc. v. District of Columbia, 92 App. D.C. 139, 203 F.2d 68 (1953), held that the local chapter of the American Institute of Banking, which educated members of Washington's banking industry in "the theory and practice of banking" and attendant principles of law and economics, was not exempt as a school, college or university not for private

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3/ Such contributions are there held to be taxes, thus eliminating any claim that the International Reform case, supra, is not authoritative because it is not a tax case, see Pet. Br. 4 and Reply Br. 1 - 2.

gain. Section 1(j) of the Act of December 24, 1942, Code section 47-801a(j). It is, of course, an organization "devoted to the improvement of a purely private group", whereas

> * * * The public is interested in, and grants a tax exemption for, the education of its members, because they are men, women, and children, not because they happen to be affiliated with the District of Columbia Bankers Association. (92 App. D.C. at 141 and 143.)

District of Columbia v. Y.M.C.A., 95 App. D. C. 179, 221 F.2d 56 (1955), held that a special act relieving taxpayer from accrued taxes applied to enable recovery of monies paid to redeem taxpayer's property at a tax sale, after extensive review of the legislative history.

Natn. Capital Girl Scout Coun. v. District Ed., 231 F.S. 546 (1964), Judge Holtzoff held, after the amendment of Code 46-301(b)(5)(G), (see the International Reform Federation case, supra,) the Girl Scouts to be exempt from Social Security taxes as an organization operated exclusively for charitable purposes. In reaching this result, the Court held it must apply a "broad definition" of "charity"; noted that the organization is exempt from U. S. income tax as a charity; and found that the word "exclusively" is not to be taken literally when the "educational" activities of the Girl Scouts are merely incidental. 231 F.S. at 547.

Finally, in District of Columbia v. Sport Fishing Institute, 102 App. D.C. 277, 252 F.2d 841 (1958), an organization for the financial and commercial benefit of fishing tackle manufacturers was held not exempt from personal property taxes, because it is conducted for the private gain of its organizers.

In conclusion on this and the preceding topical headings, it is evident that in the jurisdiction, the reviewing court has looked into the essential nature of the organization claiming exemption, and has not been constrained, in granting exemptions, by mere verbal or dictionary distinctions. "Charity" can be read broadly to include reform. "Science" can include Catholic education and the fostering of wild life. Along the route to a decision in many cases, petitioner's status under exemption provisions of other laws is referred to, and therefore should be considered here:

As shown in Exhibit 3, supra, petitioner is an exempt organization under Section 501(c)(3) of the Internal Revenue Code. In its capacity as an independent agency of the D. C. Government this court can and does note, overruling respondent's objections (Br. 8 - 9), that petitioner is exempt from D. C. income taxes under Code section 47-1554(d), and exempt from sales and use taxes under Code section 47-2605(c), as defined in Code section 47-2601-18.

"Tax exemptions are to be strictly construed." This rubric is found in several of the controlling authorities. National Rifle Assn., supra, 77 App. D.C. at 291; Mount Vernon Seminary, supra, 69 App. D.C. at 254; Washington Chapter, etc., supra, 92 App. D.C. at 141; Combined Congregations v. Dent, 78 App. D.C. 254, 255, 140 F.2d 9, 10; Hebrew Home v. D. C., 79 App. D.C. 64, 65, 142 F.2d 573. In the Mount Vernon Seminary opinion, the reference is balanced by references to the "principle" that it "does not justify the interpolation" of qualifications into the exemption statute (citing three cases), and to the rule that "the language of an exemption statute must be given its ordinary meaning." (citing ten cases). (id.) In the four other cases in which it appears,

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the decision denying tax exemption was plainly reached on substantive considerations rather than on strict definition of the words of the statute. The "principle" is not mentioned in the ten other authorities considered in this opinion.

In the Wildlife Federation case, Judge Fahy suggests that where there is "a quasi-public purpose -- a quid pro quo", such as an educational purpose, the exemption will not be strictly construed, and indicates that the quid pro quo rule applies where special interests seek exemption (93 App. D.C. at 390):

> * * * an exemption may not create inequality in taxation between persons or institutions of a private character by giving the property of one, and not the other, its benefit. But it may aid and encourage a public or quasi-public service through designated types of organizations, such as library, benevolent, charitable or scientific institutions * * * for no private gain. * * * the public benefit which the government "reasonably might assume" is sufficiently proved when the activity [of the National Wildlife Federation] is in fact scientific and private gain is excluded. (Footnote omitted.)

Actually, the rubric, or rule, has little or no foundation in fact in the decided cases. District Judge McLaughlin, in the opinion of the lower court in the Y.M.C.A. case considered supra, found in 124 F. Supp. 449, 452, puts it thus:

> * * * Statutes providing for exemptions from taxation of educational or benevolent organizations or similar organizations, unlike other tax exemption statutes, are to be construed liberally. Helvering v. Bliss 293 U.S. 144, 55 S.Ct. 17, 79 L.Ed. 246; Faulkner v. Commissioner, 1 Cir., 112 F.2d 987; United States v. Proprietors of Social Law Library, 1 Cir., 102 F.2d 481; Cochran v. Commissioner, 4 Cir., 78 F.2d 176; Roche's Beach, Inc. v. Commissioner, 2 Cir., 96 F.2d 776; Bohemian Gymnastic Ass'n v. Higgins, 2 Cir., 147 F.2d 774, 777, and cases cited therein.

"Charitable" under the Federal income tax. Charitable contributions, as defined, alone are deductible for purposes of the Federal income tax. 1954 Internal Revenue Code, section

170(a)(1). However, the term "charitable contribution" is broadly defined to include, inter alia, gifts to organizations "for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals." id. section 170(c)(2)(B). This, then, is a prime example of the broad sweep of the word "charity" in the writing of tax exemption legislation.

The definition of organizations exempt from Federal income tax is very broad. I.R.C. section 501(c) states the general categories, including "charitable" organizations. I.R.C. Regulations section 1.501(c)(3)-1(c)(2) explains what is meant --

> Charitable defined. The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency. The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501 (c)(3) so long as it is not an "action" organization of any one of the types described in paragraph (c)(3) of this section.

The Federal income tax statutes, a strong influence in molding our use of words in common parlance and in technical construction of the D. C. tax statutes, thus squarely supports the broadest construction of the word "charity" in our D. C. Code.

Conclusion

This has been a difficult case, and a close case. The decision would have gone to respondent if at any point in the research -- legislative history, precedents, analogies, other exemption provisions showing legislative purpose -- a reasonable basis had been found for strict construction of section 1(h) of the Act of December 24, 1942. Considerations of current tax policy (brought up in many or most of the authorities, notably Mt. Vernon Seminary, supra), militate against tax exemptions. See L. L. Ecker-Racz, "Financing the District of Columbia", report commissioned by the Government of the District of Columbia, August 30, 1968, chapter 5, "Property Taxation", pp. 26 - 28:

> The growing exemption of property from taxation is a national problem, but no other city suffers from it on a scale that even approaches the situation here. * * * over half of the land area and probably half of the real estate value in the District is exempt from taxation. * * *
>
> The exempt non-profit group includes the conventional "education, religious and charitable" activities serving the local community and generally exempted in most cities on the ground that they serve a desirable public purpose. However, in addition to the type of exempt properties found in most communities, the District often is the home of the national headquarters of the exempt organizations frequently housed in monumental structures in the most highly priced locations where they pre-empt portions of the very limited space available in the District for taxable private enterprise. The tax exemption of these properties obliges the District to bear a tax loss burden that is more properly borne by the residents of a larger geographical area, perhaps the entire Nation. * * *

Dr. Ecker-Racz cites the fact that even local charitable institutions require local governmental services and should pay for them; points out that some exempt organizations (Ford Foundation in New York, Harvard University in Cambridge) voluntarily contribute to local government support; and indicates that at least "user charges", related to the cost of municipal services, should be imposed. Op. cit., pp. 28, 53. Dr. Ecker-Racz figures that $546 million of "educational, charitable and religious" property is tax-exempt in the District, and an additional $200 million "by explicit Congressional mandate". "If it is desired to assist these organizations financially in recognition of their public service, such encouragement is better provided through an open appropriation of funds than indirectly through a hidden tax exemption." Op. cit., pp. 27 - 28.

On the other hand, Dr. Ecker-Racz is not addressing the courts, but the legislative authorities. He seeks general revision of exemption legislation, not restrictive interpretation of existing law. And there is no basis for such an interpretation in the case of an organization dedicated solely to the protection of our national and local natural environment, in an age when "Our environment, which took hundreds of millions of years to be built, is in danger of being destroyed in our generation." Statement attributed to Charles A. Lindbergh by William Steif, Columnist, Washington Daily News, October 30, 1969, p. 23.

Decision for petitioner will be entered under Rule 30.

Robert M. Weston
Judge

Served as follows:

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Phyllis R. Liberti, Clerk